

REMARKS

Claims 20-34 are currently pending and claims 1-19 were previously withdrawn. By this Amendment, claim 21 has been cancelled, and new claims 35-53 have been added. Accordingly, claims 20 and 22-53 are currently at issue.

I. Rejections Under 35 U.S.C. § 103

Claims 20-34 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,523,496 to Keithly ("Keithly"). Applicant respectfully traverses the rejections.

Applicant submits that Keithly cannot be considered prior art to the present Application. Based on its publication date (Feb. 25, 2003) and the filing date (July 3, 2001), Keithly could only possibly be considered to be prior art under 35 U.S.C. § 102(a) or 102(e).¹ Applicant submits that Keithly is disqualified as prior art under both §§ 102(a) and (e).

A. § 102(a)

Keithly is not prior art under § 102(a), because the present claims have an effective filing date of December 14, 2001, based on the priority claim to U.S. Patent Application No. 10/017,126 ("the Parent Application"). The present Application is a continuation-in-part of the Parent Application, and all the present claim elements are disclosed by the parent Application. For example, the elements of claim 20 are listed below, with reference to the relevant disclosure in the Parent Application:

20. A process for enhancing commercial poultry breeder operations, comprising:
- supplying a space having an area at which poultry breeders are fed; (Col. 4, Lns. 1-13)
- providing a breeder poultry feed diet composition which comprises a nutritive balanced feed composition and a citrus feed supplement, (Col. 6, Lns. 8-21) said citrus feed supplement being a citrus byproduct generated by expressing citrus juice from citrus fruit, the citrus byproduct comprising citrus peel or pulp, (Col. 6, Lns. 22-32) said citrus

¹ Keithly cannot qualify as prior art under § 102(b), because Keithly was first published on Feb. 25, 2003, which is less than one year prior to Applicant's filing date, even without the benefit of the earlier priority date.

feed supplement being at a concentration of not more than about 2 weight percent, based on the total weight of the poultry feed diet composition; (Col. 6, Lns. 10-11) and placing said breeder poultry feed diet composition within the area at which poultry breeders are fed, thereby having the poultry feed on the breeder poultry feed diet. (Col. 11, Lns. 48-49)

Accordingly, claims 20 and 22-34 are entitled to the priority date of the Parent Application (December 14, 2001), and Keithly does not qualify as prior art under § 102(a) because it was not "patented or described in a printed publication" before the priority date.

B. § 102(e)

Keithly is also disqualified as being prior art under § 102(e) by the provisions of 35 U.S.C. § 103(c), because both the invention of the present Application and the subject matter of Keithly were, at the time the present invention was made, owned by or subject to an obligation of assignment to Tropicana Products, Inc. This is evidenced by the Assignment recorded at Reel/Frame 015259/0629, assigning Keithly to Tropicana Products, Inc., and the Assignment recorded at Reel/Frame 015505/0636, assigning the present Application to Tropicana Products, Inc. Accordingly, Keithly cannot be used to establish a rejection under § 103(a), and the present rejections of claims 20 and 22-34 must be withdrawn.

II. New Claims

New claims 35-53 have been added to the present Application. Applicant submits that That new claims 35-53 are patentable over Keithly, for the reasons briefly summarized below.

New claims 35-37 depend from claim 20 and contain all the elements thereof. Accordingly, claims 35-37 are patentable for the reasons stated above with respect to claim 20. Applicants note the disclosure in the present Application, at Par. 66-71, and in the Parent Application at Col. 11, Ln. 48 – Col. 12, Ln. 44, as supporting claims 35-37.

New claim 38 is also entitled to the priority date of the Parent Application, and thus, Keithly does not qualify as prior art to claim 38. The elements of claim 38 are listed below, with reference to the relevant disclosure in the Parent Application:

38. (New) A process for enhancing commercial poultry breeder operations, comprising:

supplying a space having an area at which poultry breeders are fed; (Col. 4, Lns. 1-13)

providing a breeder poultry feed diet composition which comprises a nutritive balanced feed composition and a citrus feed supplement, (Col. 6, Lns. 8-21) said citrus feed supplement being a citrus byproduct generated by expressing citrus juice from citrus fruit, the citrus byproduct comprising citrus peel or pulp, (Col. 6, Lns. 22-32) said citrus feed supplement being at a concentration of not more than about 2 weight percent, based on the total weight of the poultry feed diet composition; (Col. 6, Lns. 10-11) and

placing said breeder poultry feed diet composition within the area at which poultry breeders are fed, thereby having the poultry feed on the breeder poultry feed diet, (Col. 11, Lns. 48-49) wherein the poultry feed diet composition provides sufficient nutrition to permit the poultry breeders to gain weight while feeding exclusively on the poultry feed diet composition. (Col. 11, Ln. 48 – Col. 12, Ln. 44)

Accordingly, claim 38 is entitled to the priority date of the Parent Application, and claim 38 is also patentable, for the reasons described above with respect to claim 1. New claims 39-53 depend from claim 38 and contain all the elements thereof. Accordingly, claims 39-53 are patentable for the reasons stated above with respect to claim 38.

III. Double Patenting Rejections

Claims 20-34 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 20, 22-26, 28, 29, and 31-39 of copending Application No. 10/017,126. However, Applicant notes that Application No. 10/017,126 issued as U.S. Patent No. 7,115,298 on October 3, 2006. Applicant submits that the present claims are patentably distinct from the claims of the '298 patent. However, in the interests of furthering prosecution, Applicant submits herewith a Terminal Disclaimer, obviating the double patenting rejection.

CONCLUSION

In view of the foregoing, Applicant respectfully requests reconsideration of the Examiner's rejections and allowance of claims 20 and 22-34 in the present Application. Applicant further requests examination and allowance of new claims 35-53 in the present Application. Applicant submits that the Application is in condition for allowance and respectfully requests an early notice of the same.

Please charge all fees in connection with this communication to Deposit Account No. 19-0733.

Respectfully submitted,

Dated: October 31, 2007

By: _____



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